

Appl. No. 09/314,566  
Amdt. Dated 04/13/2005  
Reply to Office Action of 01/13/2005

**Amendments to the Drawings:**

The attached sheet of drawings includes formal drawings of FIGs. 1-5 as requested by the Examiner. FIG. 4 has been expanded to include FIG. 4A and 4B, where FIG. 4B represents the computer readable program code as originally set forth in claims 16-18. No substantive new matter has been added.

Attachment: Replacement Sheets

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### **REMARKS/ARGUMENTS**

This Amendment is in response to the Office Action mailed January 13, 2005. The Examiner is thanked for his thorough examination of the subject application.

In the Office Action, claims 1-18 were rejected under 35 U.S.C. § 102(a). Claims 4-6 and 16-18 have been amended. Claims 1-3 and 7-15 have been cancelled without prejudice. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

#### ***Drawings***

The drawings were objected to under 37 C.F.R. § 1.83(a). Applicants have amended the drawings to include new FIG. 4B, which identified the program code executed by the route switch processor (CXP) as originally claimed. No new substantive matter has been added.

Applicant respectfully requests that the Examiner withdraw the objection to the drawings.

#### ***Specification***

The Examiner objected to specification, citing a few informalities. Applicants have amended the specification and respectfully request the Examiner to reconsider and withdraw the outstanding objection.

#### ***Claim Objections***

Claims 7-12 were objected to due to a few informalities. Applicants have cancelled claims 7-12 without prejudice. In light of the foregoing, Applicants respectfully request the Examiner to withdraw this outstanding objection.

#### ***Double Patenting***

Claim 12 was rejected based on a provisional double patenting rejection. Since claim 12 has been cancelled without prejudice, Applicants respectfully request withdrawal of the provisional double patenting rejection.

#### ***Rejection Under 35 U.S.C. § 102***

Claims 1-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by a publication entitled "A Two-bit Differentiated Services Architecture for the Internet" (hereinafter referred to as "Nichols"). Applicants respectfully traverse the rejection because a prima facie case of anticipation has not been established. For clarity purposes, the grounds for traversing the dependent claims shall not be discussed since Applicants believe that the independent claims as amended are in condition for allowance. Applicants reserve the right to present such arguments if an appeal is warranted.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is

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found, either expressly or inherently described, in a single prior art reference." *Vergegual Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

With respect to both independent claims 1 and 16, Applicants respectfully submit that Nichols does not describe each and every limitation set forth in these newly amended claims. Applicants respectfully request reconsider of the amended claims by the Examiner. For instance, with respect to claim 1, Applicants respectfully submit that Nichols does not describe (i) classifying the data packet including a type of service (TOS) indicator in order to produce an internal class service (ISC) indicator and a drop preference (DP) indicator, (ii) modifying the data packet with a watermark (WM) indicator according to the availability of a system resource, (iii) concatenating the ISC indicator, the WM indicator and the DP indicator of the data packet to produce a key value, (iv) comparing the recovered data to a committed information rate (CIR), or (v) discarding the data packet based on a result of a comparison of the recovered data and the CIR

### Conclusion


Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 04/13/2005

By

  
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### Attachments

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Date: 04/13/2005

  
Susan McFarlane

04/13/2005

Date